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August 11, 1997

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W. - Room 222
Washington, D.C. 20554

Re: **CCBPo1 97-9** -- Common Carrier Seeks Recommendations On
Commission Actions Critical To The Promotion of Efficient Local
Exchange Competition

EX PARTE

CC Docket No. 96-45 -- Federal-State Joint Board on Universal
Service;

CC Docket No. 97-160 -- Forward-Looking Mechanism for High
Cost Support for Non-Rural LECs;

CC Docket No. 95-185/- Interconnection Between Local Exchange
Carriers and Commercial Mobile Radio Service Providers;

DA 96-2140, FCC 97-264 -- Petition for Declaratory Ruling of the
Cellular Telecommunications Industry Association

Dear Mr. Caton:

In response to the Common Carrier Bureau's public notices released July 18,
1997 and July 24, 1997,¹ Sprint Spectrum L.P. d/b/a Sprint PCS submits the following
comments.

¹ FCC Public Notice, *Common Carrier Bureau Seeks Recommendations on Commission
Actions Critical to the Promotion of Efficient Local Exchange Competition*, DA No. 97-1519

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The Federal Communications Commission ("FCC" or "Commission") can speed substantially the development of competition in the local exchange market by eliminating the regulatory barriers that prevent wireless carriers from competing successfully with traditional wire telephone services. Although wireless carriers offer significant infrastructure cost advantages in many circumstances, and can provide consumers with greater flexibility in meeting their telecommunications needs, their overall cost structure is inflated artificially by a number of existing legal and regulatory obstacles. Sprint PCS requests that the Commission carefully consider the five conditions outlined below that can ensure consumers a fair choice among telephone services that best meet their individual needs for price, quality, flexibility and features.

1. Wireless Carriers Must Have Access To Public And Private Antenna Sites On Fair And Reasonable Terms No More Burdensome Than Those Applied To Traditional Telephone Carriers' Placement Of Poles And Wires

The availability of viable antenna sites is a critical issue for wireless service providers. Simply put, if a provider cannot find sufficient antenna sites, it cannot provide wireless services. The Commission has developed an extensive record on state and local measures that restrict or ban wireless antenna siting or place such onerous burdens on siting, that they effectively act as a barrier to competitive entry.² Such measures violate sections 332 and 253 of the Communications Act of 1934 (the "Act"), and must be preempted. The Commission recently concluded that it has the authority to preempt local facility siting moratoria to the extent that they prohibit, or have the effect

(July 18, 1997); FCC Public Notice, *Common Carrier Bureau Extends Filing Date for Submitting Recommendations for Commission Actions Related to Local Exchange Competition*, DA No. 97-1568 (July 24, 1997).

² For example, the Commission has received extensive comment on both the Petition of US West, Inc. for Declaratory Ruling that Roseville, Minnesota Ordinances Inhibit Entry of CMRS Providers in Contravention of the Communications Act and the Cellular Telecommunications Industry Association's ("CTIA") Petition for Declaratory Ruling requesting that the Commission preempt moratoria imposed by state and local governments on the siting of telecommunications facilities.

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of prohibiting, competitive entry or constitute local regulation of commercial mobile radio services ("CMRS") prohibited by the Act.³

The Commission should resolve expeditiously all pending antenna siting matters. Clear Commission guidance on this issue will assist state and local governments in their exercise of local zoning and right-of-way management authority and will ensure that the rapid development and deployment of advanced telecommunications services is not hindered by the unavailability of antenna sites.

2. Wireless Telephone Service Cannot Be Subject To Greater Tax Burdens Than Other Business Enterprises

Discriminatory or excessive taxes, franchise fees or other charges also operate as barriers to competitive entry. In 1972, the Commission noted that:

... many local authorities appear to have extracted high franchise fees more for revenue-raising than for regulatory purposes. Most fees are about five or six percent, but some have been known to run as high as 36 percent. The ultimate effect of any revenue-raising fee is to levy an indirect and regressive tax on cable subscribers.⁴

Substitute "mobile carrier" for "cable" in the statement above, and the Commission's words ring true today.

The current Commission can address this issue, in part, by completing a pending proceeding that would allow the Commission to preempt state and local governments from imposing discriminatory or excessive taxes on wireless carriers. A petition filed by the CTIA asks the Commission to initiate a rule making proposing to exercise its authority under the Act to preempt State and local governments from imposing

³ See FCC Public Notice, *Supplemental Pleading Cycle Established For Comments On Petition For Declaratory Ruling Of The Cellular Telecommunications Industry Association*, FCC No. 97-264 (July 28, 1997).

⁴ See *Amendment Of Part 74, Subpart K, Of The Commission's Rules And Regulations Relative To Community Antenna Television Systems*, 36 FCC 2d 143, 209 (1972), *aff'd sub nom. ACLU v. FCC*, 523 F.2d 1344 (9th Cir. 1975).

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discriminatory or excessive taxes on wireless carriers.⁵ As CTIA notes, the Commission has such authority under Sections 151, 253 and 332 of the Act and has exercised such authority in the past.

3. Wireless Carriers Must Have The Same Access As Traditional Telephone Companies To Reimbursement For Serving High-Cost Areas And Low-Income Consumers.

In many instances, wireless services will provide the most cost-effective and efficient means for providing basic telephone services. Wireless service providers, however, will not seek to provide services in high-cost areas if they do not have the same access to both state and federal universal service programs as their competitors. If the states are permitted to limit wireless provider eligibility for universal service programs, the universal service goals of the Commission and Congress will be jeopardized.

Sprint PCS urges the Commission to confirm that state universal service programs may establish eligibility conditions, methods of calculating the level of support to be paid to eligible entities and other rules only insofar as those rules do not discriminate against any class of telecommunications service provider or technology.⁶ Although the requirement that state universal service programs must permit full participation by CMRS providers is not open to serious dispute, the Commission should make this requirement unmistakably clear.

Even the FCC has revealed an unfortunate bias that seems to favor wireline technology. In a further notice of proposed rulemaking in the ongoing universal service proceeding, the Commission tentatively concludes that universal service should be defined to include a minimum, flat-fee local usage component, a decision that would

⁵ *Amendment of the Commission's Rules To Preempt State And Local Imposition Of Discriminatory And/Or Excessive Taxes And Assessments*, Petition for Rule Making of the Cellular Telecommunications Industry Association (filed September 26, 1996).

⁶ *See Federal-State Joint Board on Universal Service*, Petition for Clarification of Sprint Spectrum L.P. d/b/a/ Sprint PCS, CC Docket No. 96-45 (filed July 17, 1997)

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undermine that cost advantages of wireless technology⁷ and would jeopardize the ability of CMRS carriers to provide universal service. As the Commission continues its efforts to revamp universal service, it must ensure that consumers in high-cost areas and low income consumers not be denied the benefit of the advanced services offered by CMRS providers.

4. The Commission Must Establish Uniform Federal Rules for CMRS-LEC Interconnection

Congress recognized the special status of CMRS in 1993 by granting the FCC separate authority to regulate CMRS-LEC interconnection under 47 U.S.C. § 332, and by amending § 2(b) of the Act to create an express exception for intrastate CMRS-LEC regulation. Congress's 1993 amendments authorize the FCC to "establish[] uniform rules to govern the offering of all commercial mobile services."⁸ Section 332(c)(1)(B) expressly grants the FCC authority to order CMRS-LEC interconnection. In addition, § 332(c)(3)(A) expressly preempts state rate and entry regulation of all commercial mobile services.

The United States Court of Appeals for the Eighth Circuit recently affirmed the FCC's authority to issue interconnection rules as they apply to CMRS providers. Therefore, the Commission should expeditiously complete CC Docket No. 95-185⁹ and establish federal CMRS-LEC interconnection rules.

5. The Calling Party Should Be Responsible For The Cost Of Each Call, Regardless Of Whether The Called Party Uses Wired Or Wireless Telephone Service

Existing charge and billing structures for wireless services limit the ability of wireless subscribers to control costs, making such services more expensive than

⁷ *Federal-State Joint Board on Universal Service; Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, CC Docket Nos. 96-45 and 97-160, Further Notice of Proposed Rulemaking, FCC No. 97-256, at ¶ 178 (July 18, 1997).

⁸ H.R. Rep. No. 111, 103d Cong., 1st Sess. 259 (1993).

⁹ *See In the Matter of Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 3141 (1996).

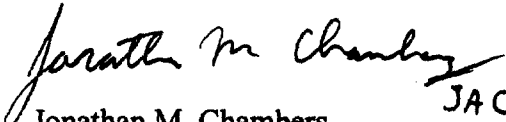
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traditional telephone services. This discourages wireless subscribers from freely circulating their telephone numbers. Implementation of a calling party pays ("CPP") billing structure would give subscribers greater control over their own costs, increase wireless traffic, and ultimately reduce the basic costs for wireless services. In those countries in which CPP is the norm, average wireless traffic volumes significantly exceed those in the United States. Increased traffic volumes are necessary if wireless providers are to offer services at rates approaching the average cost of wireline service.

Although individual states have adopted varying rules on CPP, a state-by-state approach inevitably will lead to consumer confusion, varying standards, and higher operating costs for wireless carriers seeking to use this billing method. The Commission should exercise its authority in this area and establish national guidelines and standards for CPP.

By addressing each of the five issues as discussed above to increase the competitive stature and general acceptance of wireless services, the Commission can significantly affect the overall cost structure and competitiveness of wireless services and thus accelerate the development of local exchange competition.

Very truly yours,


Jonathan M. Chambers
Sprint PCS

cc: Chairman Reed Hundt
Commissioner Rachelle Chong
Commissioner Susan Ness
Commission James Quello
Regina Keeney
Dan Phythyon
A. Richard Metzger, Jr.
Susan Fox
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Mary Beth Richards
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